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April 10, 2023

By ECF

MEMORANDUM ENDORSED

Honorable Gabriel W. Gorenstein  
United States Magistrate Judge  
United States District Court  
500 Pearl Street  
New York, NY 10007-1312

**Re: *Murray, as Leviticus Lucifer v. Dabo, et al.*, 22-CV-4026 (VEC) (GWG)  
Defendants' Request to File Materials Under Seal**

Dear Judge Gorenstein:

The Office of the Attorney General represents defendants Dr. Sidiki Dabo and RN Eguagie Ehimwenma ("Defendants") in the above-captioned matter. Earlier today, Defendants filed on ECF their motion to dismiss the Second Amended Complaint, or in the Alternative, for Summary Judgment. Pursuant to the Court's Individual Rule 2.E, Defendants respectfully request permission to file certain exhibits attached to their motion under seal.

*Pro se* Plaintiff Robert Murray, also known as Leviticus Lucifer ("Plaintiff"), was hospitalized at Kirby Forensic Psychiatric Center ("Kirby"), a high-security inpatient facility operated by the New York State Office of Mental Health ("OMH"). He brings this lawsuit alleging that Defendants, a doctor and nurse at Kirby, violated his rights under the Eighth Amendment to the United States Constitution in various alleged ways.

Plaintiff's publicly filed pleadings have affirmatively put his psychiatric treatment at issue, and Defendants have responded to his allegations in their publicly filed papers. However, out of an abundance of caution, Defendants respectfully request permission to file relevant excerpts of Plaintiff's clinical record and copies of hospital security video footage under seal.

Defendants make this request because OMH generally has a duty to maintain the confidentiality of patient clinical records pursuant to New York Mental Hygiene Law § 33.13. Further, courts have frequently held that medical records may be sealed from the public docket. See, e.g., *Valentini v. Group Health Incorporated*, 2020 WL 7646892, 20-CV-9526 (JPC), at \*2

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(S.D.N.Y. Dec. 23, 2020) (“courts regularly seal records protected from disclosure by HIPAA”).

Further, the two hospital security video exhibits briefly show at least one third party Kirby patient other than Plaintiff. Pursuant to New York Mental Hygiene Law § 33.13, OMH has a duty to maintain the confidentiality of “the identification of patients or clients . . . .” In order to protect the privacy rights of those other patients, who have no involvement in this proceeding, Defendants request permission to file the video exhibits under seal.

The exhibits that Defendants request permission to file under seal are as follows:

- Defendants’ Exhibit 1, attached to Hamalian Declaration: report for treatment over objection application.
- Defendants’ Exhibit 4, attached to Dabo Declaration: clinical progress notes for April 14, 2022.
- Defendants’ Exhibit 5, attached to Dabo Declaration: clinical progress notes for April 18, 2022.
- Defendants’ Exhibit 6, attached to Dabo Declaration: clinical progress notes for April 20, 2022.
- Defendants’ Exhibit 7, attached to Dabo Declaration: clinical progress notes for April 21, 2022.
- Defendants’ Exhibit 8, attached to Ehimwenma Declaration: clinical progress notes for April 20, 2022.
- Defendants’ Exhibit 10, attached to Gavins Declaration: first security video
- Defendants’ Exhibit 11, attached to Gavins Declaration: second security video

Defendants have replaced these exhibits with slip sheets in their public ECF filing pending the Court’s ruling on this request. Pursuant to the Court’s Individual Rules, Defendants are providing courtesy copies of the full, unredacted versions of these exhibits to the Court and to the Plaintiff. The security video files will be provided to the Court and the Plaintiff on a DVD.

Thank you for your consideration of this request.

Respectfully submitted,

Application to file under seal granted.  
No need to send courtesy copies of the  
exhibits (if you haven’t done so already).

/s/ Antwaun E. Gavins  
Antwaun E. Gavins  
Assistant Attorney General

So Ordered.

  
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GABRIEL W. GORENSTEIN  
United States Magistrate Judge

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